



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 20, 1996

Mr. John S. Schneider, Jr.
First Assistant City Attorney
City of Pasadena
P. O. Box 672
Pasadena, Texas 77501

OR96-1502

Dear Mr. Schneider:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 100155.

The City of Pasadena (the "city") received a request for information concerning a specific public employee and the following other related information:

[C]ity records about the housing rehabilitation program, including the names of contractors Mr. Gomez hired on the city's behalf, specific homes that have been rehabilitated and information regarding homes which were not repaired to proper HUD standards.

You submitted a sample of the requested information to this office and claim that the requested information is excepted from disclosure under sections 552.101, 552.102 and 552.111 of the Government Code.¹ We have considered the exceptions you claimed and have reviewed the documents at issue.²

¹You also raised section 552.103 with regard to the representative sample of information submitted to this office, but not until May 29, 1996. It appears that the original open records request was received by you on May 16, 1996. As you did not raise this exception within the ten day deadline required by section 552.301(a), we conclude that you have waived this exception. Therefore, we will not address your assertion that section 552.103 protects the requested information.

²We note that some of the information submitted to this office does not appear responsive to the request.

Section 552.101 excepts from required public disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. In addition to statutory sources of privacy, section 552.101 incorporates the doctrine of common-law privacy.³ Under the doctrine of common-law privacy, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); Open Records Decision No. 611 (1992) at 1.

In reference to the list marked "Exhibit 1" and titled "Housing Rehabilitation Index," which appears to be a list of names and addresses of recipients of federal housing assistance, you contend the information should be withheld "pursuant to Texas Privacy Law as confidential information." We have examined the submitted information and conclude that it is not protected from disclosure under common-law privacy. *See* Open Records Decision Nos. 318 (1982) (names and addresses of individuals who occupy public housing are not protected by common-law privacy). Additionally, we are not aware of any law that makes the requested information confidential, nor do you raise any such statute. Accordingly, we conclude the city may not withhold the requested information based on section 552.101 of the Government Code.⁴

You also assert that the documents submitted as "Exhibit 4" are excepted from disclosure pursuant to sections 552.101 and 552.102 of the Government Code. As stated above, for information to be protected from public disclosure under the common-law right of privacy, the information must meet the criteria set out in *Industrial Foundation*. Section 552.102 protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The protection of section 552.102 is the same as that of the common-law right to privacy under section 552.101. *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Consequently, we will consider these two exceptions together for the documents submitted as "Exhibit 4."

You assert that the submitted information is excepted from required public disclosure under section 552.101 of the Government Code because you believe it would

³Section 552.101 also incorporates constitutional privacy but we are unaware of any grounds on which the requested information is confidential under either the federal or state constitution. We note that the scope of constitutional privacy is narrower than that of common-law privacy. *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985).

⁴You also raised section 552.021 of the Government Code as an exception to disclosure for "Exhibit 1." However, section 552.021 is not an exception to disclosure, but is merely the general access to public information provision.

be an "invasion of privacy" to disclose such information. However, this office has previously held that a common-law right of privacy does not protect facts about a public employee's misconduct on the job or complaints made about his performance. *See* Open Records Decision Nos. 438 (1986), 230 (1979), 219 (1978). Additionally, this office has long held that information relating to a public employee's tenure is clearly public information. Open Records Decision No. 342 (1982) at 3 (name, position, experience, tenure, salary and education long held to be disclosable). After a review of "Exhibit 4," we find that this information is not highly intimate or embarrassing and there exists a legitimate public interest in this information. *See* Open Records Decision No. 165 (1977). Therefore, the city may not withhold the information in "Exhibit 4" from the requestor pursuant to sections 552.101 and 552.102.

We next address your assertion that the documents submitted as "Exhibit 2" and "Exhibit 3" are excepted from required public disclosure under section 552.111 of the Government Code. Section 552.111 of the Government Code excepts from required public disclosure:

[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.

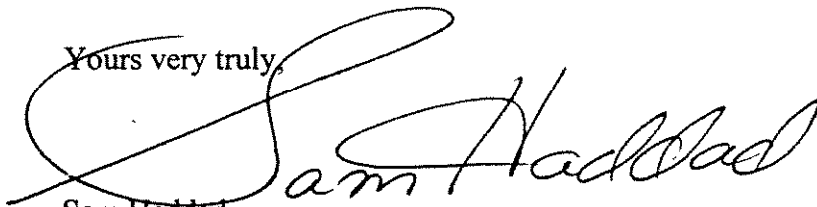
This exception applies to a governmental body's internal communications consisting of advice, recommendations, or opinions reflecting the policymaking process of the governmental body at issue. *See* Open Records Decision No. 615 (1993). A governmental body's policymaking process does not include routine internal administrative and personnel matters. *See id.* at 5-6. Furthermore, this exception does not except from disclosure purely factual information that is severable from the opinion portions of the communication. *See id.*

We have examined the documents you claim section 552.111 excepts from required public disclosure. You have submitted copies of correspondence between the city and the United States Department of Housing and Urban Development ("HUD"), which includes some information responsive to the request. The submitted information in Exhibits 2 and 3 contains mostly factual information that is severable from the opinion portions of the communications. We have marked some of the information you sent for our review, as a sample, to indicate the types of information that may be withheld from disclosure, under section 552.111, and the types of information that must be disclosed.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous

determination regarding any other records.⁵ If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Sam Haddad". The signature is fluid and cursive, with a large initial "S" and "H".

Sam Haddad
Assistant Attorney General
Open Records Division

SH/ch

Ref.: ID# 100155

Enclosures: Submitted documents

cc: Crissie McMennamy, Staff writer
Pasadena Citizen
102 South Shaver Street
Pasadena, Texas 77506
(w/o enclosures)

⁵In reaching our conclusion, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.